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**Federal Communications Commission**  
Washington, DC 20554

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In the Matter of

Federal Communications Commission  
Office of Secretary

Implementation of the Satellite Home )  
Viewer and Reauthorization Act of 2004 )  
Implementation of Section 340 of the Act ) MB Docket No. 05-49

To: Secretary

Attn: Eloise Gore, Media Bureau

**Comments of GULF-CALIFORNIA BROADCAST COMPANY**

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**Comments in the Matter of Implementation of the Satellite Home  
Viewer Extension and Reauthorization Act of 2004.**

Gulf-California Broadcast Company (hereafter referred to as "Gulf") is a small-market broadcasting company serving the Palm Springs, California market and the Yuma-EI Centro, markets. We are the licensee of analog station KESQ-TV Palm Springs, CA, KUNA-LP, Indio, CA, and KESE-LP in Yuma, AZ. Gulf also holds a construction permit to build and operate digital station KESQ-DT in Palm Springs, CA, and operates Fox affiliates KDFX-CA, Indio, CA, and KECY-TV, EI Centro, CA, under a local management agreement. Gulf operates stations in very small television markets. Palm Springs is Nielsen market 159, and Yuma/EI Centro is Nielsen market 176.

Gulf offers the following comments in response to the Commission's Notice of Proposed Rule Making adopted on February 4, 2005, and released on February 7, 2005, in the Matter of Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004.

**I. Section 341 (b) of the SHVERA Act: Prohibiting a satellite carrier from carrying the signal of a television station into an adjacent local market that is comprised of only a portion of a county, other than to un-served households in that county.**

**A: Background:**

There were no over-the-air television stations in the Palm Springs market until 1968. The FCC allocated only two full-power over-the-air channels to the market. Two full-power

stations went on the air in 1968 and continue to operate now. KESQ-TV (ABC) operates on channel 42, and KMIR-TV (NBC) operates on channel 36.

Low power TV stations originate all other local television programming in the Palm Springs market. Network affiliates of CBS, Fox, Azteca, Univision, Telemundo, and UPN are all low power TV stations and they are entirely dependent upon cable carriage for viewers and economic survival. The Telemundo, Univision, and Azteca affiliates deliver Spanish-language local news, public affairs, and entertainment programming to Palm Springs Hispanic population, which currently comprises almost 50% of the total audience of the DMA.

Satellite-delivered duplicative network and syndicated programming from the adjacent Los Angeles market will siphon away audiences from the local Palm Springs stations, seriously impact their financial viability, and adversely affect their ability to provide free programming service.

As the Commission stated in the NPRM (Para. 17, p. 10) "In 1972 the Commission used 1971 American Research Bureau (ARB) information to establish a baseline list of significantly viewed signals." This data provided audience statistics on a county basis. Although the Commission recognized some drawbacks in using this information, it concluded that county audience statistics could be used to indicate over-the-air viewing in all communities within a county." We have underlined this quotation for emphasis. One of the "drawbacks" that inadvertently occurred as a result of using county-wide viewing data was that the 1972 Arbitron county list failed to take into account the geographic nature and huge size of Riverside County, California. Riverside County stretches from Orange County in the Los Angeles basin to the Arizona Border, and east to within 30 miles of the Mexican Border. Riverside County incorporates 7,303 square miles. As a basis for comparison, adjacent San Diego County incorporates 850 square miles.

The towering San Bernardino and San Jacinto mountains divide central and eastern Riverside County from the Los Angeles basin. The mountains block terrestrial television signals of the Los Angeles television stations from reaching the Palm Springs DMA. Yet because of the flawed "county wide" methodology used to create the 1972 list of significantly viewed stations, Los Angeles stations KABC, KCBS, KNBC, KTLA, KCOP, KCAL, and KTTV are all considered "significantly viewed" in Palm Springs. They are on the list even though they have never provided a terrestrial signal or any significant local news, public affairs, or local programming to the Palm Springs market.

Because the Los Angeles stations are erroneously listed as "significantly viewed," KESQ and KMIR have not been entitled to full network non-duplication and syndicated exclusivity protection. In accordance with a private agreement with the Los Angeles stations and the local cable companies, KESQ and KMIR currently receive limited, protection for programs they broadcast simultaneously...i.e. at the same time as a Los Angeles station. The agreement will expire on December 31, 2005.

Gulf emphasizes that the Palm Springs DMA stations must schedule programs according to the dictates of the Los Angeles television station schedules to get "simultaneous" network non-duplication and syndicated exclusivity protection. This is contrary to the Commission's and the Congress' goal of encouraging local broadcast programming to address the needs of their local communities.

KESQ and KMIR recently filed petitions with the FCC seeking a waiver of the significantly viewed rules vs. several Los Angeles stations. There is no assurance that there will be a ruling of any kind on these petitions prior to the expiration of the local agreement at the end of 2005. In any event, this private, local, cable non-duplication agreement does not apply to satellite carriers.

There is no opportunity for the local low power stations to file a waiver petition like the one filed by KMIR and KESQ because the Commission's non-duplication and syndicated exclusivity rules do not apply to LPTV's, including Class A LPTV stations. These low-power network affiliates are also not entitled to request "must carry" from satellite providers under the Commission's rules or the provisions of the new SHVERA. Additionally, the programming exclusivity protections envisioned by Congress when it passed SHVERA do not apply to the local CBS, Azteca, Univision, Fox, Telemundo, and UPN stations...the majority of the over-the-air stations serving the 135,800 television households in the Palm Springs market<sup>1</sup>.

**B. Section 341 (b) Effect:**

Recognizing the unique nature of local broadcasting in the Palm Springs television market, Congress wisely included Section 341(b) in SHVERA. Section 341 (b) protects the Palm Springs stations from devastating competition from duplicative signals imported from the adjacent Los Angeles market and preserves free, local, over-the-air broadcast voices in the Palm Springs market.

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<sup>1</sup> The Commission states in Paragraph 26 of its NPRM in regard to Section 339 (e) (1) "This provision requires us, therefore, to (1) create a limited right for a station or distributor to assert exclusivity with respect to a station carried by a satellite carrier as significantly viewed; (2) allow that significantly viewed station to assert the significantly viewed exception, just as a station would with respect to cable coverage; and (3) allow the station or distributor asserting exclusivity to petition us for a waiver from the exception."

Section 341(b) prevents a satellite carrier from retransmitting “the signal of a television station into an adjacent market that is comprised of only a portion of a county, other than to un-served households in that county. The Palm Springs market is comprised of the central one-third of sprawling Riverside County, California. The western one-third is located on the west side of the San Bernardino and San Jacinto mountains, and is included in the Los Angeles DMA. The eastern one-third is included in the Los Angeles market (by virtue of the flawed methodology used by the Commission to compile the 1972 list of significantly viewed stations.)

The Bakersfield DMA consists of the western half of Kern County, California. The eastern half of Kern County is included in the Los Angeles DMA only by virtue of the flawed methodology used to compile the 1972 significantly viewed list.

Gulf-California consulted with the A.C. Nielsen Company, which designates television markets annually based upon its audience research criteria. Nielsen reports that among all television DMA's in the United States, only the Palm Springs and Bakersfield DMA's consist of a portion of a single county. Thus, we agree with the Commission that the scope of this provision applies only to the DMA's of Palm Springs and Bakersfield, California. For the Palm Springs market, Section 341 (b) applies to signals from the Los Angeles, San Diego, and Yuma-El Centro television markets, since they are adjacent. For the Bakersfield DMA, the Los Angeles, Fresno, and Santa Barbara-Santa Maria-San Luis Obispo television markets are adjacent.

The interpretation of Section 341(b) is self explanatory. A satellite carrier is precluded from retransmission of a significantly viewed signal into the Palm Springs or Bakersfield DMA's if that signal originates from an adjacent market, except to an un-served household.

## **II. Proposed Addition of Future Communities to the Significantly Viewed List**

The NPRM discusses two alternatives. In one scenario, satellite carriers could conduct a survey in one or more zip code areas to define a “satellite community” to prove that a distant signal is significantly viewed. While the scenario proposes that the survey would have to be of non cable homes that are “proportional” to the population, it does not conform to the Commission’s cable rules for such a finding. Those rules require, for a “cable community,” that at least two professional surveys must be taken per year in each of two years, and the results, must show, with one standard deviation added, that the distant station is significantly viewed. An alternative method would allow surveys of individual communities, using the average of two independent surveys per year in each of two years, with one standard deviation added. Any criteria for any significant viewing test should conform exactly to the criteria now used for cable systems. We believe Congress implicitly intended to include the concept of parity with cable rules in the significant viewing issues addressed in SHVERA.

Furthermore, non-cable homes include satellite homes. Therefore, the proposed “zip code” approach effectively allows a satellite carrier to measure households receiving its own imported station programming to determine significant viewing status. The original concept of “significant viewing” was an attempt by the Commission to replicate terrestrial viewing habits. Indeed, there would be little “randomness” to a sample conducted by a satellite carrier, who has access to a complete list of its customers and what signals they subscribe to. This approach would allow a satellite carrier to “cherry pick” individual zip code areas, then “cherry pick” who was surveyed, and commission a friendly third party to create a non-random sample which could fraudulently show significant viewing of distant signals.

To truly reflect viewing habits, any such survey should be truly random, and should be a survey of terrestrial, non-cable homes, not satellite viewers who may be receiving distant signals simply because they are already getting them from the satellite carriers.

The first proposal is a fairer and more rational approach to determining geographic areas eligible for “significant viewing” surveys. At the very least, where a satellite carrier samples viewing in existing communities, both incorporated and unincorporated, the rules should require that all zip codes included in that community be surveyed. Where zip codes in unincorporated areas are sampled, there should a requirement that they be grouped by some governmental boundary such as a county or township, and again, that all zip codes in the governmental boundary must be sampled proportionately with additional sampling rules conforming to those now used for cable.

### **III. Eligibility to receive distant signals**

The NPRM at Paragraph 39 states that the Commission does “not think that a subscriber should be deprived of access to a significantly viewed station because the local station refused to grant retransmission consent or is otherwise ineligible for local carriage, but we seek comment on this tentative conclusion.”

The Commission should not allow a satellite carrier to rebroadcast a significantly viewed station into a local market just because a local station is “otherwise ineligible for local carriage.” Since many of the nation’s smallest television markets are at least partially served by Class A and other Low-Power TV stations which provide network television service to their communities, a policy of this sort would likely drive the local low power stations out of business. As Class A and other Low Power stations, they are technically not eligible for local into local satellite “must carry”. Therefore, if this policy went into effect, these stations would be deprived of their audiences through no fault of their own.

Indeed, if this provision had been in effect in Palm Springs as recently as 1999, this market would likely not have a local CBS, Telemundo, Azteca, or UPN affiliate since all of these low-power network affiliates went on the air after that year.

Moreover, this policy places LPTV stations at a huge disadvantage if they wish to negotiate with satellite operators for carriage. Under the proposed policy, what would prevent a satellite operator from demanding payments from local LPTV affiliates as the price of carriage...using the threat of importing a significantly viewed distant signal if they don't pay? In the Palm Springs market, low-power Telemundo, Azteca, and Univision network affiliates provide many hours per day of locally produced, Spanish-language news programming and additional network Spanish-language news, information, public affairs, programming 24 hours per day, seven days per week. Low Power Fox affiliate KDFX-CA broadcasts a half-hour of original locally produced news programming in prime time seven nights per week; a full schedule of Fox network programming, including cable-only high definition programming to local subscribers; and 18 hours per day of locally syndicated entertainment programming. Low Power CBS affiliate KPSP broadcasts a full schedule of CBS network programming, local news and information programming in the morning, afternoon, evening, prime time, and late fringe time periods; and a full schedule of cable-only network high definition digital programming to local subscribers. Low power UPN affiliate KPSE broadcasts nearly 22 hours per day of locally syndicated entertainment programming.

#### **IV: Equivalent bandwidth Digital Carriage**

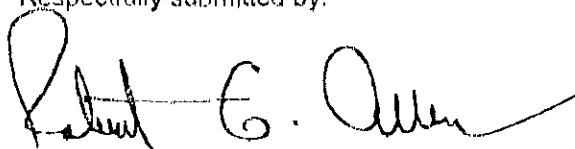
The Commission draws the tentative conclusion at Paragraph 44 that a satellite carrier may import a significantly viewed distant HDTV signal if it carries only the single SD format of a local station. This conclusion fails to take into account the economic challenges of providing HDTV service in very small television markets. It is very possible that small stations simply cannot afford at this early stage of digital television, the expense of full HDTV carriage. This concept, carried to its conclusion, would allow satellite carriers to substitute HD signals of well-heeled adjacent larger markets, while carrying lesser SD signals of smaller, local stations. For instance, KESQ-TV produces seven hours per day of local news programming and it produces an additional hour of news programming for KDFX-CA and KUNA-LP. Yet unlike the ABC owned-and-operated station in adjacent Los Angeles, it does not, at this time, have the resources to produce all of its local programming in high-definition.

Moreover, what will happen at the time the local station does offer HD programming? If the satellite carrier is already importing a distant station's HD programming, what will compel the satellite carrier to increase the bandwidth currently devoted to the local station's SD signal when the local station begins broadcasting in HD? At the very least, the Commission should address this in its final rules. We propose that at such time as local station broadcasting in SD offers an HD signal, the satellite carrier should be required to devote the additional bandwidth needed to provide this service to local subscribers, even if the satellite carrier is already providing a duplicative HD signal from a significantly viewed distant station.

**V: Additional Discussion of "Equivalent Bandwidth" Carriage Issues.**

The FCC makes an additional equivalent bandwidth proposal at Paragraph 45 that is even more onerous for local stations. We believe the Commission is wrong when it concludes "for example if a carrier chooses to retransmit only a portion of the multicast signal of the significantly viewed distant network affiliate, it need only retransmit the local network station using the same amount of bandwidth." This policy would effectively deprive local stations of the opportunity to ever have their HD signals carried by a satellite carrier, so long as the carrier delivered a duplicative SD signal from a distant, significantly viewed station. A fairer approach would be to require the satellite carrier to deliver a distant signal of "equivalent bandwidth" to the local station, not the other way around. A satellite carrier should be prohibited from carrying a significantly viewed, duplicative distant signal, unless the distant signal is at least equal in bandwidth to the local station. In other words, if the local station is carried in HD, then a satellite carrier should be required to deliver the significantly viewed, distant station in HD, or not at all. This is clearly the intent of Congress.

Respectfully submitted by:

A handwritten signature in black ink, appearing to read "Robert G. Allen", with a long horizontal flourish extending to the right.

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